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October 28, 1996

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Mr. William F. Caton, Acting Secretary  
Federal Communications Commission  
Room #222  
1919 M Street, N.W.  
Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

Re: In the Matter of Implementation of Section 255  
of the Telecommunications Act of 1996, Access to  
Telecommunications Services, Telecommunications  
Equipment, and Customer Premises Equipment by  
Persons with Disabilities

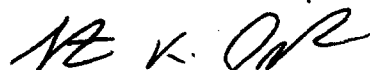
Dear Mr. Caton:

Enclosed please find for filing on behalf of Motorola, Inc. ("Motorola") an original and four copies of Motorola's Comments in connection with the above-referenced proceeding.

Also, enclosed please find one copy of Motorola's Comments to be date stamped and returned with our messenger.

If there are any questions concerning this filing, please do not hesitate to contact me.

Respectfully submitted,



Steven K. Davidson  
Counsel for Motorola, Inc.

Enclosures

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**Before The**  
**FEDERAL COMMUNICATIONS COMMISSION**  
**Washington, D.C.**

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**OCT 28 1996**

**FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY**

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In the Matter of

Implementation of Section 255 of the  
Telecommunications Act of 1966

Access to Telecommunications Services,  
Telecommunications Equipment, and  
Customer Premises Requirement  
By Persons with Disabilities

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WT Docket No. 96-198

**COMMENTS OF MOTOROLA, INC.**

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Dated: October 28, 1996

## SUMMARY

Motorola strongly supports the principle of access to telecommunications equipment by Americans with disabilities embodied in Section 255 of the Telecommunications Act of 1996 ("Telecom Act"). 47 U.S.C. § 255. Motorola has confidence in the power of technology and the resourcefulness of the telecommunications industry to improve communication by and between persons with disabilities. As one of the largest providers of wireless telecommunications equipment in the world, Motorola has already contributed substantially in providing an ever-increasing range of telecommunications equipment that is accessible to persons with widely divergent disabilities.

Motorola submits these comments to the Federal Communications Commission ("the Commission") to express its views on implementation of Section 255 and on the guidelines that will be issued by the Architectural and Transportation Barriers Compliance Board ("the Access Board"). As a member of the Advisory Committee appointed by the Access Board, Motorola is actively participating in the guideline formulation process.

Motorola's comments in response to this Notice of Inquiry ("NOI") fall into four broad categories. First, the Commission should not adopt the guidelines promulgated by the Access Board wholesale but must exercise substantive review of

the guidelines. Second, accessibility requirements must be applied equitably to different types of equipment manufacturers: large and small, foreign and domestic, and should not impair the ability of domestic manufacturers to export their equipment for sale overseas. Third, the readily achievable standard should be applied with a long-term goal of promoting, rather than constraining, technological innovation and maximizing the resources that manufacturers dedicate to accessible product design and development. At all times, the Commission must remain focused on the statutory definition of readily achievable, which defines the scope of what is required under the Telecom Act, and is defined by statute to mean "without much difficulty or expense." 42 U.S.C. § 12181(9). Fourth, the appropriate focus in implementing the Telecom Act should be the overall accessibility of telecommunications equipment available in the marketplace to persons with all types of disabilities, not the accessibility of each piece of telecommunications equipment for people with each particular disability.

In addition to these overarching concerns, Motorola also expresses its views on the definition of "disability" as applied to the telecommunications equipment context.

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**Before The**  
**FEDERAL COMMUNICATIONS COMMISSION**  
**Washington, D.C.**

**In the Matter of**

**Implementation of Section 255 of the  
Telecommunications Act of 1996**

**Access to Telecommunications Services,  
Telecommunications Equipment, and  
Customer Premises Requirement  
By Persons with Disabilities**

**WT Docket No. 96-198**

**COMMENTS OF  
MOTOROLA, INC.**

**INTRODUCTION**

Motorola submits these comments in response to the Commission's NOI in this proceeding,<sup>1/</sup> released on September 19, 1996. Motorola has been, and continues to be, firmly committed

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<sup>1/</sup> In the Matter of Implementation of Section 255 of the Telecommunications Act of 1996, Access to Telecommunications Services, Telecommunications Equipment, and Customer Premises Requirement by Persons with Disabilities, Notice of Inquiry ("NOI"), WT Docket No. 96-198 (rel. Sept. 19, 1996).

to manufacturing telecommunications equipment<sup>24</sup> that is accessible to persons with disabilities. Motorola is concerned, however, that the disability access provisions of the Telecom Act be implemented in a manner that is consistent with the statutory requirements, is fair and equitable, does not hinder the ability of American manufacturers to export products outside of the United States and promotes, rather than impedes, the development of telecommunications products for the disabled.

Section I of these comments addresses the appropriate interrelationship of the Commission and the Access Board in implementing the disability access requirements of the Telecom Act. Since the Commission has ultimate authority to enforce Section 255, and because of the Commission's expertise, it should exercise extensive substantive review of the guidelines issued by the Access Board.

Section II outlines relevant issues to be considered in order to ensure equitable application of the Telecom Act to avoid distorting competitive incentives. In particular, Motorola is concerned about the possibility of inequitable application of

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<sup>24</sup> For the purpose of the comments, Motorola uses the term "telecommunications equipment" to include both telecommunications and customer premises equipment as those terms are defined in the Telecom Act. 47 U.S.C. §§ 153(a)(38),(50).



Section 255 to different types of manufacturers, based upon size or nationality.

Section III discusses how the disability access provisions of the Telecom Act can be implemented in a way that promotes, rather than impedes technological innovation. Motorola emphasizes the need to take a long-term and forward-looking view towards incorporating disability access considerations into the product design process.

Section IV provides support, by analogy from the American with Disabilities Act ("ADA") context, for Motorola's position that the Telecom Act does not require a manufacturer to demonstrate compliance on a model-by-model basis. Instead, the ADA suggests that the Commission should take a more global view of the overall accessibility of telecommunications equipment available in the marketplace to persons with disabilities.

In Section V, Motorola identifies the need to clarify and limit the definition of "disability" as applied in the telecommunications equipment context.

**I. THE COMMISSION SHOULD NOT ADOPT THE GUIDELINES ULTIMATELY ISSUED BY THE ACCESS BOARD WITHOUT EXERCISING EXTENSIVE SUBSTANTIVE REVIEW OF THE GUIDELINES<sup>3/</sup>**

In order to fulfill Section 255's mandate to develop guidelines "in conjunction with" the Access Board, the Commission should not accept the guidelines that are ultimately adopted by the Access Board without exercising extensive substantive review.

Under the Telecom Act, the Commission has exclusive authority over complaints against manufacturers regarding the accessibility of equipment to persons with disabilities. 47 U.S.C. § 255(f). Since the Commission has exclusive enforcement authority, it should exercise substantive review of the Access Board's guidelines to ensure that they are both reasonable and will in fact promote the goal of Section 255: to provide an increasing range of telecommunications equipment accessible to the disabled. Indeed, before the Commission could enforce any guidelines ultimately issued by the Access Board, the Commission would need to adopt those guidelines through some mechanism. Therefore, the Commission will have the opportunity to review guidelines issued by the Access Board if the Commission chooses to do so.

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<sup>3/</sup> Response to NOI ¶ 7, ¶¶ 29-34.

Moreover, the Commission should exercise this opportunity for review because of its expertise and experience in regulating the telecommunications industry as a whole. Although Section 255 obligates both equipment manufacturers and providers of telecommunications services to provide access to the disabled where readily achievable, 47 U.S.C. § 255(b),(c), the Access Board only has statutory authority to issue guidelines "in conjunction with" the Commission that relate to telecommunications and customer premises equipment. 47 U.S.C. § 255(e). At a minimum, the Commission should review the guidelines adopted by the Access Board to ensure that the burden of compliance has been allocated fairly between manufacturers and service providers.<sup>4/</sup>

Further, although the Access Board has some experience in the telecommunications area because of its involvement in the Hearing Aid Compatibility Act ("HAC Act") negotiated rulemaking, the Commission certainly has superior knowledge and expertise regarding the telecommunications industry. The Access Board has made commendable efforts to include industry experts in the guideline formulation process by

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<sup>4/</sup> For this reason alone, the Commission should not, as other federal agencies have done, adopt the Access Board's guidelines wholesale, or with merely editorial changes. See 56 Fed. Reg. 45619 (Sept. 6, 1991) (Department of Transportation rule adopting Access Board guidelines published at 56 Fed. Reg. 45531 (Sept. 6, 1991) with only editorial changes).

including telecommunications equipment manufacturers on the Telecommunications Access Advisory Committee ("TAAC"). Because of the Commission's greater familiarity with telecommunications technology, however, it has particular expertise for the purposes of: (1) recognizing what advances telecommunications equipment manufacturers have already made to provide increased access for the disabled; (2) determining what is readily achievable from both a technological and economic standpoint; and (3) predicting the impact of any proposed changes in equipment design on market response and technological innovation.

While recognizing that the Access Board has a significant role in implementing Section 255, the Commission should exercise extensive review of guidelines ultimately issued by the Access Board. The Commission retains exclusive authority for enforcing disability access requirements; Section 255 expressly precludes any private rights of action and vests exclusive jurisdiction over compliance with the Commission.<sup>5/</sup> 47 U.S.C. § 255(f). Moreover, the Commission should exercise substantive review of the guidelines by the Commission because of

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<sup>5/</sup> Although Motorola has not provided individual comments related to enforcement and complaint-processing procedures, it simply notes that any enforcement procedure ultimately adopted by the Commission for equipment manufacturers must be consistent with the statutory bar against private rights of action and the vesting of exclusive jurisdiction with the Commission expressly provided in Section 255(f). See NOI ¶ 36.

its expertise in regulating the telecommunications industry as a whole.

**II. COMPLIANCE REQUIREMENTS FOR ACCESSIBILITY MUST BE EQUITABLY APPLIED TO DIFFERENT TYPES OF EQUIPMENT MANUFACTURERS IN ORDER TO AVOID DISTORTING COMPETITIVE INCENTIVES**

As evidenced by this NOI, the Commission recognizes that the accessibility requirements of Section 255 should not be implemented in a way that distort competitive incentives. See NOI ¶ 18. The Commission must apply accessibility requirements equitably to different types of telecommunications equipment manufacturers, foreign or domestic, large or small. Any other policy would distort competitive incentives with unpredictable consequences for both the market and technological innovation.

**A. Section 255 Should Not Be Applied To Place Domestic Manufacturers Such As Motorola At A Competitive Disadvantage In the Global Marketplace**

Motorola, one of the largest providers of wireless telecommunications equipment in the world, is an American corporation which manufactures a significant number of its products in the United States. Motorola strongly supports the goal of providing an ever-increasing range of telecommunications equipment accessible to persons with disabilities. At the same time, however, Motorola believes that the disability access requirements of the Telecom Act should not be implemented in a

way that places Motorola at a competitive disadvantage in the global marketplace because Motorola maintains a significant manufacturing presence in the United States.

1. With respect to products marketed in the United States, foreign manufacturers must bear the same burden, in terms of cost and effort, of compliance as domestic manufacturers.<sup>6/</sup>

The Commission should not treat the accessibility requirements of the Telecom Act any differently than other technical or operational requirements for telecommunications equipment sold in the United States, which apply regardless of the location or national affiliation of the manufacturer. See Part 2 of the Commission's Rules, Subpart K- Importation of Devices Capable of Causing Harmful Interference, 47 C.F.R. §§ 2.1201-.1207; 47 C.F.R. § 68.4 (implementing the HAC Act, requiring that every telephone manufactured in the United States or imported for use in the United States must be hearing aid compatible). The Commission has the authority to impose equal obligations on any manufacturer to the extent that the device will be imported for use within the United States. See 47 U.S.C. § 152. Any other policy would unfairly place domestic manufacturers like Motorola at a competitive disadvantage vis-a-vis foreign competitors.

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<sup>6/</sup> Response to NOI ¶¶ 11, 20.

In this NOI, the Commission has requested comment concerning whether accessibility requirements should apply to foreign manufacturers with equal force as technical and operational requirements, with which any manufacturer marketing products in the United States must comply. Motorola questions the Commission's concern that equal application of accessibility requirements to foreign and domestic manufacturers is somehow inappropriate because of the "different accommodations that may be necessary for different disabilities." NOI ¶ 11. The accessibility requirements under the Telecom Act are not likely to be any more burdensome than other operational or technical requirements.

Furthermore, the Commission should not consider foreign manufacturers' efforts to comply with the accessibility requirements imposed by other countries in determining what is readily achievable under the Telecom Act. If the Commission were to adopt such a policy, domestic manufacturers could be required to take steps to provide accessible equipment that a foreign manufacturer would not be required to take. Under these circumstances, foreign manufacturers could pass the costs of complying with foreign accessibility requirements along to foreign customers, and undercut the prices of domestic manufacturers such as Motorola, or charge the same price, making

a greater profit. Additionally, there is no guarantee that foreign nations would apply their accessibility requirements to take into consideration efforts undertaken by American companies, like Motorola, to comply with the Telecom Act.

Because of the size of the American market for telecommunications equipment, the disproportionate application of accessibility requirements to domestic manufacturers could significantly distort competition and market incentives. As a result, the Commission should ensure that the burden of compliance with the Telecom Act's disability access requirements falls equally on both foreign and domestic manufacturers.

2. The Commission should exempt domestically manufactured products intended for export from compliance with Section 255 so that domestic manufacturers, like Motorola, are not placed at a competitive disadvantage vis-a-vis their foreign competitors.

Conversely, the Commission should exempt domestically manufactured telecommunications equipment intended for export from the disability access requirements of the Telecom Act in order to avoid placing domestic manufacturers at a competitive disadvantage in the global marketplace. The Commission should not require compliance with accessibility requirements simply because a product is manufactured in the United States, but only if the product is intended for domestic sale. Otherwise domestic



corporations like Motorola will be at a competitive disadvantage vis-a-vis foreign corporations that are not required to provide accessible equipment for sale in foreign countries.

The Commission has a long-standing practice of exempting telecommunications equipment manufactured for export from technical and operational requirements applicable to equipment sold in the United States. Recently adopted regulations implementing the hearing aid compatibility requirement of the HAC Act contain such an export exemption for domestically manufactured telephones.<sup>11</sup> 47 C.F.R. § 68.4. Other technical and operational requirements similarly do not apply to domestically manufactured products intended for export. See 47 U.S.C. § 302(c) (governing interference).

Of course, even if products intended for export were exempt from Section 255, Motorola would ensure that its products complied with the accessibility requirements of the point of sale country.

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<sup>11</sup> The HAC Act expressly exempts telephones manufactured for export from the hearing aid compatibility requirement, whereas the Telecom Act does not specify its intended extraterritorial effect. Compare 47 U.S.C. § 610(b) with 47 U.S.C. § 255.

The HAC Act's exemption from extremely similar accessibility requirements demonstrates, however, the compelling policy reasons in favor of such an export exemption for domestically manufactured products.

**B. Because of the Unique Nature of Product Design and Development in the Telecommunications Equipment Industry, the Commission Should Not Consider the Resources of Parent Corporations In Determining What Is Readily Achievable<sup>1/</sup>**

The Commission should not consider the resources of a parent corporation in determining what is readily achievable and therefore required under the Telecom Act. The statutory definition of readily achievable does not expressly include a parent corporation's resources; therefore, the Commission is not required to consider this as a factor. See 42 U.S.C. § 12181(9). Moreover, the Commission should not consider a parent corporation's resources because it would place a disproportionate burden upon larger telecommunications manufacturers, even though, as a practical matter, small and large manufacturers design and develop equipment in essentially similar ways.

The definition of readily achievable, incorporated from the ADA by reference, does not expressly include the resources of parent corporations as a relevant factor for the Commission to consider. Rather, the statutory definition refers to "the overall resources of the covered entity" or "facility" involved. 42 U.S.C. § 12181(9). The Department of Justice ("DOJ"), in its regulations implementing the ADA, supplemented the statutory definition to include the operations of a parent

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<sup>1/</sup> Response to NOI ¶¶ 16, 19.

corporation as an additional factor. 28 C.F.R. § 36.201. DOJ has specifically indicated, however, that a parent corporation's resources should not be automatically considered in determining what is readily achievable, but on a case-by-case basis "in light of 'the geographic separateness, and the administrative or fiscal relationship of the site or sites in question to any parent corporation or entity'." Preamble to Regulation on Non-Discrimination on the Basis of Disability by Public Accommodations and In Commercial Facilities ("DOJ Preamble to Regulations"), 28 C.F.R. part 36, App. B.

In contrast to the ADA, the Commission should not interpret the definition of readily achievable to include potential consideration of the financial resources of a parent corporation because of the unusual nature of product design in the telecommunications equipment industry. Functionally, large and small telecommunications manufacturers develop and design products in essentially the same way, through the use of small, largely independent design groups that function like "incubators" for new product development. Even where a large parent corporation is involved, each small design "incubator" possesses a significant level of administrative and fiscal autonomy. Cf. DOJ Preamble to Regulations, 28 C.F.R. part 36, App. B (indicating that such factors weigh against considering a parent

corporation's financial resources in the ADA context). These small design "incubators" survive within a large parent corporation just like a smaller corporation survives on its own in the marketplace -- based upon its ability to design commercially successful products. If the group cannot generate a marketable product, it will not be funded by a parent corporation.

And, in any event, even if the Commission ultimately decides to consider the resources of a parent corporation in determining what is readily achievable, the Commission should recognize that this would remain only one sub-factor of the definition of readily achievable, which is specifically defined as meaning "without much difficulty or expense." 41 U.S.C. § 12181(9).

### **III. THE READILY ACHIEVABLE STANDARD SHOULD BE APPLIED WITH A LONG-TERM GOAL OF PROMOTING, RATHER THAN CONSTRAINING, TECHNOLOGICAL INNOVATION**

The Commission appropriately recognizes that the accessibility requirements of the Telecom Act, specifically the readily achievable standard, must be implemented "in a way that will take advantage of market and technological developments, without constraining competitive innovation." NOI ¶ 16. In order to promote technological innovation in equipment design and development, which has already dramatically increased the range

of telecommunications equipment accessible to the disabled, the Commission should implement three strategies. First, the Commission should recognize that the readily achievable standard implicitly involves a long-term process of developing accessible products. Second, within the limitations of the readily achievable standard, defined as "without much difficulty or expense," 42 U.S.C. § 12181(9), the Commission should implement Section 255 so that manufacturers will maximize the resources dedicated to accessible product design and development. Third, the Commission should focus its efforts on promoting the development of accessible technologies of the future and incorporation of accessibility considerations into manufacturers' design processes.

**A. The Readily Achievable Standard Implicitly Involves a Long-Term Process**

Congress intended that the readily achievable standard would involve a process of providing increased access for the disabled without stifling technological innovation and competition or making unreasonable demands. The Telecom Act expressly requires consideration of compliance costs, burdens, and technological abilities -- the operative test is "without much difficulty or expense." 42 U.S.C. § 12181(9).

**B. The Commission Should Apply the Readily Achievable Standard to Maximize the Resources Dedicated to Complying with the Telecom Act That Are Actually Used By Manufacturers For Research and Development of Accessible Equipment**

In a highly competitive market that is price-sensitive, telecommunications equipment manufacturers are pressed to allocate sufficient resources to product design and development. Implementation of the disability access provisions of the Telecom Act will undoubtedly impose compliance costs upon equipment manufacturers. In formulating specific requirements related to accessible product design and development, the Commission should ensure that manufacturers will maximize the resources dedicated to accessible product design and development rather than divert resources to compliance with an onerous bureaucracy.

In this NOI, the Commission has also requested comments on how the cost and financial resources component of readily achievable standard should be defined. NOI ¶ 17. Consideration of cost is essential in determining what is readily achievable and therefore required under the Telecom Act: readily achievable is defined as "without much difficulty or expense." 42 U.S.C. § 12181(9). Consequently, if the Commission intends to implement disability access requirements consistently with this statutory definition, cost must be a predominant factor.

It is impossible, at this juncture, to estimate costs of compliance with process-oriented or any other type of standard because it is unclear how the readily achievable standard will apply to telecommunications products. Costs would vary widely depending on the scope of the application of this standard: whether it will require manufacturers to demonstrate that each model is accessible (or that accessibility is not readily achievable); or whether the standard will apply to more broad product families of equipment and services.

If the Commission were to interpret the readily achievable standard to require a model-by-model demonstration of compliance with Section 255, the Commission might produce little more than a large, costly compliance bureaucracy. Such a system would divert resources from product design and development, and would, over the long-term, detract from the overall services accessible to the disabled.

Consequently, the Commission should be extremely conscious of the cost component of the readily achievable standard in order to maximize the amount of resources that are devoted by manufacturers to accessible product design and development. Moreover, the Commission must be attentive to costs because cost is at the heart of the statutory definition of

readily achievable, defined as "without much difficulty or expense." 42 U.S.C. § 12181(9).

**C. The Readily Achievable Standard Should Be Implemented With a Focus on New Products or Models, So That Accessibility Issues Can Be Taken Into Account At the Design Stage**

Where accessibility for the disabled is not readily achievable, the Commission should focus on the compatibility of telecommunications and customer premises equipment with the most up-to-date and technologically advanced peripheral devices commonly used by the disabled, since these peripheral devices are more likely to continue being used in the future. And, there should be some consideration given to including manufacturers of equipment for the disabled, e.g., Braille readers, in this regulatory process, so that peripheral devices used by the disabled can enhance or facilitate additional improvements in accessibility of telecommunications and customer premises equipment.

Similarly, the Commission should not interpret the Telecom Act to require retrofitting existing customer premises equipment. Given the speed with which technological advances render existing customer premises equipment obsolete, a policy focused on retrofitting existing equipment to become accessible would seem to be a misallocation of resources. Moreover,



emphasis on retrofitting existing customer premises equipment would stifle technological innovation and fail to incorporate accessibility considerations into the product design process.

**IV. THE APPROPRIATE FOCUS IN IMPLEMENTING THE TELECOM ACT SHOULD BE THE OVERALL ACCESSIBILITY OF TELECOMMUNICATIONS EQUIPMENT AVAILABLE IN THE MARKETPLACE TO PERSONS WITH ALL DISABILITIES, NOT THE ACCESSIBILITY OF EACH PIECE OF TELECOMMUNICATIONS EQUIPMENT FOR PEOPLE WITH EACH PARTICULAR DISABILITY<sup>2/</sup>**

The readily achievable standard should not be applied on a model-by-model basis for each product, but should be applied with a more global view towards maximizing the overall range of products that are accessible to individuals with widely divergent disabilities. Under this interpretation, a manufacturer's compliance with Section 255 would be judged based upon the overall range of products available to and accessible to the disabled community as a whole.

By analogy, the ADA strongly suggests that the goal of providing access and compatibility to telecommunications equipment may be, and from an economic standpoint, should be, achieved without adjusting all products or models within a product line. Even in the context of new construction, which is subject to more stringent requirements than existing structures, the ADA does not require accessibility for each specific

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<sup>2/</sup> Response to NOI ¶ 22.